(4)

C.A. 2002

IN THE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. No. 1925 /2003

Petitioner : 1. PRAVEEN KUMAR LAKHOTIA
S/o Shri Brij Mohan Lakhotia,
aged about 31 years,

2. PRADEEP KUMAR LAKHOTIA
S/o Shri Brij Mohan Lakhotia,
aged about 24 years,

Both partners :-
M/s Ashirwad agency
Bemetara, Tah. Bemetara,
Distt. Durg (C.G.)

P.R. No. 1685 Presented by Shri V.K. Tamaskar dated 12.06.03

VERSUS

Respondents : 1. Indian Oil Corporation Limited
Regd. Office - G9 Ali Yavar
Jung Marg, Bandra East
Mumbai 400051
Through : General Manager
Indian Oil Corporation Limited
Raipur Divisional Office
Aerodrum Road, Raipur (C.G.)

2. Senior Divisional Manager,
Indian Oil Corporation Limited
Raipur Divisional Office
Aerodrum Road, Raipur (C.G.)

3. The Collector,
Durg (Chhattisgarh)

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सहपथ आयुक्त एस.के. शुक्ला बिलासपुर (छ.ग.) बिलासपुर तहसील कोर्ट

(5)

4. Shri V. Venu,
Chhattisgarh Fuels,
Indian Oil Corporation Limited,
Main Road, Bemetara,
Distt. Durg (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

(101)

A.F.R.

27/9

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1925 of 2003

Praveen Kumar Lakhotia & another

- Versus -

Indian Oil Corporation Limited and others

Writ Petition No.613 of 2001

Praveen Kumar Lakhotia & another

- Versus -

Indian Oil Corporation Limited and others

AND

Writ Petition No.47 of 2001

Praveen Kumar Lakhotia & another

- Versus -

Indian Oil Corporation Limited and others

POST FOR ORDER ON 27th SEPTEMBER, 2004

(102)

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Praveen Kumar Lakhotia & another

- Versus -

Indian Oil Corporation Limited and others

Present: -

Mr. V.G. Tamaskar, Advocate: For the petitioners

Mr. Bhisma Kingar, Advocate: For the respondents

Before Hon'ble Mr. L.C. Bhadoo, J.

O R D E R

(Passed on 27th September, 2004)

1. The petitioners Praveen Kumar Lakhotia & Pradeep Kumar Lakhotia, who are partners in M/s Ashirwaad Agency, have preferred three writ petitions Nos. 1925/03, 613/2001 & 47/2001 under Articles 226/227 of the Constitution of India. By writ petition No.1925/2003 the petitioners have challenged the termination order of dealership dated 02.05.2001 (Annexure P-10), by writ petition No.613/2001 the petitioners have prayed for directing the respondents Corporation to restore the supply of agreed petroleum products by issuing a writ of mandamus and by

writ petition No.47/2001 the petitioners have prayed for quashment of the show cause notice Annexure P-7 and further prayed to direct the respondent Corporation to regularize the supply of petroleum products i.e. Diesel (HSD) & Petrol (MS) etc.

2. Brief facts leading to filing of these writ petitions are that by an agreement dated 01.02.1997 (Annexure P-1) the petitioners and respondents-Indian Oil Corporation Ltd. entered into an agreement whereby the respondents Corporation awarded a dealership of petroleum products namely Diesel (HSD) & Petrol (MS) to the petitioners' firm M/s Aashirwaad Agency situated at Bemetra District Durg. The respondents Corporation, Raipur issued a show cause notice dated 28.04.2000 (Annexure P-2) to the petitioners mentioning therein that on 14th/15th of April 2000 the Deputy Manager (Vigilance) Headquarter Mumbai along with Area Manager, Indane Area Office, Raipur carried out inspection and suspended the sales and supplies due to variation in density of MS & HSD beyond permissible limit, accordingly, on 15.04.2000 Deputy Manager (S), Bhilai along with Deputy Manger (TS), Raipur visited the petitioners' retail outlet and carried out inspection of the retail outlet and samples of MS & HSD were also taken for lab test/research octane No. (R.O.N.) and on receiving a communication from Nishadpura Lab vide letter dated 25.04.2000 to the effect that the sample of MS fails to meet the specification requirement in respect of R.O.N, therefore, a show cause notice was issued to the petitioners to explain the reasons as to why the product mentioned was found not meeting the required specifications, and as to why penal action as per the Corporation rules and guidelines should not be taken against your dealership as deemed fit by the Corporation.

The petitioners submitted their explanation dated 12.5.2000 (Annexure P-3) in which it was mentioned that the samples which were taken by respondent No.2 were neither sealed nor taken in presence of the petitioners or their representative employee and the test was carried out by the laboratory in their absence, therefore, it was not binding on the petitioners agency. Thereafter, the petitioners agency was served with the final show cause notice dated 27.11.2000 (Annexure P-6) to which the petitioners have

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also submitted their reply dated 04.12.2000 (Annexure P-7) and challenging the said final show cause notice Annexure P-6 the petitioners herein filed a writ petition under Article 226 / 227 of the Constitution of India, which came to be registered as W.P. No.47/2001. Thereafter, respondent No.1 & 2 in continuation of their show cause notice on 27.11.2000 took a decision to terminate the dealership of the petitioners, therefore, the petitioners had filed a writ petition bearing W.P. No.613/2001 challenging the show cause notice dated 27.11.2000. However, during the pendency of these two writ petitions the respondent Corporation on 02.05.2001 (Annexure P-10) terminated the dealership of the petitioners' agency. The petitioners vide application dated 31.7.2001 requested respondent No.1 to refer the matter for arbitration, accordingly, Shri Shinde was appointed as Sole Arbitrator, who after hearing both the parties was pleased to submit the award on 14.11.2002 (Annexure P-11), in that award the Arbitrator reached to the conclusion that the action taken by respondent No.1 was not justified, however, in view of the decision of the Hon'ble Apex Court reported in **1991 (1) SCC 533,** he decline to restore the dealership. Against this award the petitioners filed an application under Section 34 of the Arbitration & Conciliation Act, 1996 before the District Judge, Durg, who transferred the same to the Court of 4th Additional District Judge, Durg, which is pending for consideration on the date of filing of this writ petition.

Further case of the petitioners is that the respondent Corporation without making the said award rule of court proceeded to execute the said award on 10.05.2003, forcibly took the possession of the petrol pump and remove the fixtures/outlets, broke locks etc. Against this action of the respondents, the petitioners moved a contempt petition bearing Contempt Petition No.50/2003, which is still pending. Ultimately, the petitioners prayed that the termination order dated 02.05.2001 (Annexure P-10) be quashed and respondent-Corporation be directed to restore the supply of petroleum products.

3. Return has been filed on behalf of the respondent Corporation wherein the factual position is almost admitted by the respondent i.e. issuance of show cause notice, termination of the dealership &

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petitions filed by the petitioners. It has further been mentioned in the return that after termination of the dealership by the respondent Corporation vide Annexure P-10, the dispute was referred to the Arbitrator in pursuance of the petitioners' application dated 31.07.2001 invoking Clause-69 of the Dealership Agreement dated 1.2.1997 (Annexure P-1). On 14.11.2002 the Arbitrator passed the award (Annexure P-11) and against which the petitioners had preferred an application before the District Court, Durg, which is still pending for consideration. Their further case is that on sudden inspection carried out by the respondents at the retail outlet of the petitioners, samples of the petroleum products were taken and through the laboratory same were found adulterated and much below the standard specifications. Therefore, a show cause notice was issued and ultimately, the dealership was terminated as per terms and conditions of the agreement.

On 10.04.2003 the petitioners sent the consent in writing to respondent No.3 for lease or sale of the land in favour of the respondent No.1 & 2, accordingly, on 16.4.2003 respondent No.3 Collector sent a memo to respondent No.2 to restart the said petrol pump considering the hassles faced by general public of the area. Copy of the consent letter dated 10.04.2003 and Memo dated 16.4.2003 are Annexure R1-1 & R1-2 to the return. On 17.4.2003 by another memo respondent No.3-Collector issued no objection certificate in favour of respondent No.1 & 2 for the use of land survey No.1207 area 3480 sq. ft. at Bemetra vide Annexure R1-3. Respondent No.3 also informed about the non-renewal of the lease in favour of the petitioners and transfer of the land in favour of the respondent Corporation vide Annexure R1-4. On 07.5.2003 the petitioners once again reiterated and reaffirmed their consent for the use of the land in question by the respondent Corporation vide Annexure R1-6 and on 9.5.2003 the Sub Divisional Officer, Bemetra directed the Tehsildar Bemetra to deliver the possession of the site to respondent No.2 for the purpose. However, the petitioners suddenly reversed their position, questioned their own consent by letter-dated 09.5.2003 addressed to all the concerned parties (Annexure R1-8). On 10.05.2004 Tehsildar delivered the possession of the land to respondent No.2 by preparing a

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Panchnama and on the same day respondent Corporation put respondent No.4 in-charge of the said petrol pump as job contractor on the COCO basis (Annexure R1-9). Therefore, the petition of the petitioners be dismissed.

4. I have heard Shri V.G. Tamaskar, learned counsel for the petitioners and Shri Bhisma Kingar, learned counsel for respondents.

5. The factual aspects of the case are almost admitted by the parties. After issuance of the termination order (Annexure P-10) by Respondent Corporation the petitioners herein moved an application on 31.7.2001 requesting the respondent Corporation to refer the matter to the Arbitration as per Clause 69 of the Agreement. Accordingly, a sole Arbitrator Shri Shinde was appointed, who in turn after giving opportunity to the parties passed the award on 14.11.2002 (Annexure P-11), the final conclusion of the Arbitrator was that the petitioners are not entitled for restoration of the dealership in view of the decision of the Hon'ble Apex Court in the matter of **Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and other reported in 1991(1) SCC 533**. Learned counsel for the petitioners argued that unless that award is made rule of court that cannot be executed and respondent Corporation without applying the court for making the award rule of court executed the said award. In my opinion the argument advanced by learned counsel for the petitioners is totally contrary to the legal position. After coming into the force of the Arbitration and Conciliation Act, 1996 (hereinafter shall be called as 'Act of 1996) it is not necessary that the award should be made rule of court. After submission of the award as per the provisions of Section 35 of the Act of 1996, the award becomes final and binding on the parties and persons claiming under them respectively, therefore, there is no question for making the award as rule of court. However, the aggrieved party is entitled for making application for setting aside the said award in accordance with sub-section (2) & (3) of Section 34 of the Act of 1996. In the present case the petitioners have already moved an application for

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setting aside of the award before the District Court, Durg, which is still pending for decision.

The respondent Corporation terminated the petitioners' dealership vide order dated 02.05.2001 considering the reply of the petitioners in response to the show cause notice and found that the petitioners had violated the various terms and conditions of the agreement dated 01.02.1997. The Clause 58 (f) of the said agreement envisages that *"if the license issued to the Dealer by the relevant authorities for the storage of petroleum product supplied by the Corporation is canceled or revoked"*, then the Corporation shall be at liberty to terminate this agreement forthwith upon or at any time. Further condition (i) of Clause 58 of the Agreement envisages that *"if the Dealer shall deliberately contaminate or tamper with the quality or any of the Corporation's products"* then the Corporation shall be within its right to terminate the agreement under term of this clause without prejudice to any of its other rights and remedies against the Dealer, therefore, under these clauses respondent Corporation was entitled to terminate the dealership of the petitioners. It is an admitted fact that the test report of the samples collected by respondent No.2 from the outlet of the petitioners was found to be not in conformity with the standard specifications and that the Collector has already cancelled the license of the petitioners, the respondent Corporation was within their right to cancel the dealership. Since the matter was referred to the Arbitrator and he gave his award on 14.11.2002 which is under challenge before the District Court, Durg, accordingly, the alternative remedy available under Clause 69 of the Agreement has already been availed by the parties, therefore, in my opinion this writ petition does not lie, as the matter is still subjudice. However the petitioners will be at liberty to enforce their right if accrue in their favour after final adjudication of the application moved by them against the award of the Arbitrator, if so advised. In the matter of **U.P. State Bridge Corporation Ltd. and others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh reported in (2004) 4 SCC Page 268**, it has been held that *'where specific remedy provided for in the statute the High Court may not deviate from the general rule and interfere under Article 226 except when a very strong case is made out'*. In the present case against the award

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statutory remedy is available to the petitioners, they have availed the same and application for setting aside the same has been filed by them before the District Court, Durg, therefore, on this ground also this writ petition does not lie. In the matter of **Indian Oil Corporation Ltd**. (supra), Bench of three Judges of the Hon'ble Apex Court held that '*where the contract being determinable Section 14(1)(c) of the Specific Relief Act attracted no such writ petition lies*'. In Paragraph 11 of this judgment the Hon'ble Apex Court has held that '*in the contractual matters writ petition does not lie and it is not necessary to go into the constitutional limitations of Article 14 of the Constitution to which the appellant-Corporation as an instrumentality of the State would be subject particularly in view of the recent decisions of this Court in Dwarkadas Marfatia and Sons V. Board of Trustees of the Port of Bombay, Mahabir Auto Stores v. Indian Oil Corporation and Shrilekha Vidyarthi V. State of U.P. In such matters, the matter must be decided strictly in the realm of private law rights governed by the general law relating to contracts with reference to the provisions of the Specific Relief Act providing for non-enforceability of certain types of contracts'*. The facts of the above case are similar to the present case, therefore, in view of above decision also the writ petition does not lie.

6. As far as the restoration of the supply to the petitioners is concerned, since the license for running the petrol pump issued in favour of the petitioners has already been cancelled by the Collector, the dealership has been terminated by the respondent Corporation, the petitioners themselves gave consent letter (Annexure R1-1) dated 10.04.2003 to the Collector Durg that they have no objection if the land in question on which petrol pump of M/s Aashirwaad Agency is existing is transferred to the respondent Corporation for running the petrol pump and in pursuance of that consent letter, SDO, Bemetra handed over the possession of the petrol pump to the respondent Corporation, now they are running the petrol pump and the fact that the lease is also not renewed in favour of the petitioners, I am of the opinion that no such order can be passed in favour of the petitioners for restoring the supply of petroleum products. It is true that after giving letter dated 10.04.2003 & 08.05.2003, on 09.05.2003 the petitioners again

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sent a letter to the Sub Divisional Officer, Bemetra stating that possession of the land in question should not be handed over to the respondent Corporation, but before that they had already gave their consent and in pursuant to that Sub Divisional Officer, Bemetra handed over the possession to the Corporation on 10.05.2003. Therefore, unless the termination order dated 10.05.2001 (Annexure P-10) is set aside, the license is restored by the Collector and the land on which the petrol pump is existing is again leased by the Collector in favour of the petitioners relief ask for cannot be granted.

7. Learned counsel for the petitioners relying on the decision of the Hon'ble Apex Court delivered in the matter of **Harbanslal Sahnia & another Vs. Indian Oil Corporation Ltd. & others reported in 2003 (2) SCC 107** argued that against the termination of the dealership, which was petitioners' bread and butter, the petitioners are entitled to maintain writ petition. But in my opinion this decision of the Hon'ble Apex Court is no help to the petitioners for the reason that in that matter dealers had approached the Court directly challenging the order passed by the Corporation and no arbitration proceedings were initiated in that case, whereas in the present case by the consent of both the parties, arbitration proceedings were initiated and Arbitrator gave the award against the petitioners, which is under challenge and pending before the District Court. Therefore, the alternative remedy has already been availed by the parties and during the pendency of that proceeding I am of the opinion that this writ petition is not maintainable.

8. Consequently, writ petition No.47/2001 challenging the show cause notice and writ petition No.613/2001 filed by the petitioners for directing the respondent Corporation to restore the supply are not maintainable, as the main writ petition No.1925/2003 is held to be not maintainable.

9. In the result, the petitions of the petitioners are liable to be dismissed and same are dismissed.

Sd/-
L.C.BHADOO
Judge

Roshan/-